

**Revised 2/05**

## **Prototype SFA-FSMC Contract Document Forms and Instructions**

### **General Information**

This checklist is based on the requirements contained in 7 CFR Parts 210, 3015, 3016, and 3019, and OMB Circular No. A-102, Attachment O, OMB Circular No A-87, Federal Acquisition Regulations (FAR) and Idaho Statute 33-601. OMB Circular No. A-102, Attachment O, has been provided at Appendix C to the Guidance as a reference for specific contract document language. This checklist does not include the requirements applicable to those FSMCs subject to the provisions of 7 CFR 250.30, State processing of USDA donated food. For information regarding those requirements, the SFA should contact the State Distributing agency. The SFA must ensure that the State Distributing agency has reviewed and approved any processing agreement prior to the delivery of commodities for processing.

Though the checklist identifies certain unallowable SFA-FSMC contract document provisions (page 7) and advisable contract document provisions (pages 8 and 9), it is in no way inclusive of all such provisions. The State agency (SA) **must** carefully examine the contract document(s) to ensure that it **does not** contain other unallowable contract document provisions as well as provisions that are **not** in the best interest of the SFA. Careful scrutiny of the contract document(s) is required to ensure that there are no provisions that have the effect of restricting competition. If States have additional contractual requirements, an addendum to the checklist may be attached.

### **Contract Document Review**

SA reviews are required of contracts, completed IFBs/RFPs that become signed contracts, and all contract renewals. This checklist should be completed by the SFA and submitted with the reviewed document(s) to the SA within the timeframe established by the SA. SFA-FSMC contracts are also subject to review by the State Distributing agency. **In the blanks provided, for each of the required provisions contained in the checklist, the page number(s) in the document(s) where the provision is contained is to be indicated.**

**Initial Contract**—though not required, it is strongly recommended that SAs review proposed IFBs/RFPs, as well as proposed contracts developed by SFAs.

**Contract Renewal**—if the option for the yearly renewal of a contract is exercised, the SFA should include a copy of the checklist which was submitted with the initial contract, and a new checklist cover sheet, when submitting the extension agreement to the SA. The initial checklist should include notation(s) where changes have occurred. The basis for renewing the contract, as well as the basis for any fee increases or decreases, if applicable, should be noted. Additionally, a new Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions and Certification Regarding Lobbying are required for each renewal period.

## **Awarded Contracts or Contract Renewals**

The following should be completed or updated, as applicable:

**Section A. Cover Sheet**, page 1

**Section B. SFA Responsibilities**, pages 2 and 3

**Section C. FSMC Responsibilities**, page 4

**Section D. General Terms - All SFA-FSMC Contracts**, page 5

The following should be completed or updated, as applicable (in the case of a cost-reimbursable contract, the total value of the contract **must** reflect the management fees as well as the direct costs incurred by the FSMC which are billed to the SFA such as food and labor):

**Section E. SFA-FSMC Contracts in Excess of \$2,500**, page 6

**Section F. SFA-FSMC Contracts in Excess of \$10,000**, page 6

**Section G. SFA-FSMC Contracts - \$25,000 or More**, page 6

**Section H. SFA-FSMC Contracts in Excess of \$100,000**, page 7

**Section I. SFA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work**, page 7

The following should be completed or updated:

**Section J. Unallowable SFA-FSMC Contract Document Provisions**, page 8

A review of the document(s) should also include **Section K, Advisable Inclusions**, pages 9 and 10.

## Prototype SFA-FSMC Contract Document Checklist

### Section A - Cover Sheet

**SFA Use:** Review of the following attached document(s) was completed relative to the applicable requirements contained in this checklist:

### Proposed Documents:

☐ Invitation for Bid (IFB)      ☐ Request for Proposal (RFP)      ☐ Contract

### Completed Documents:

☐ Bid Documents (IFB/Signed Contract)      ☐ Bid Documents (RFP/Signed Contract)

☐ **Contract Renewal.** Indicate basis for both renewal and fee increases or decreases, if applicable:\_\_\_\_\_

☐ 1st Renewal    ☐ 2nd Renewal    ☐ 3rd Renewal    ☐ 4th Renewal

Period Covered by Renewal: From: \_\_\_\_\_ To: \_\_\_\_\_  
(Date) (Date)

For Awarded Contract (please attach sheet if additional space is needed):

Name of FSMC: \_\_\_\_\_

Agreement No.: \_\_\_\_\_ Contract Value:\_\_\_\_\_

School Food Authority: \_\_\_\_\_

School

Name(s): \_\_\_\_\_

Period Covered by Contract: From: \_\_\_\_\_ To: \_\_\_\_\_  
(Date) (Date)

SFA Authorized Representative: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

## STATE AGENCY USE

Date Received: \_\_\_\_\_

Action Taken: \_\_\_\_\_

State Agency Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

## Section B - SFA Responsibilities

Indicate page number(s) in the contract where the provisions listed below are located:

**Page No.**

- \_\_\_\_\_ 1. **Provisions Under Program Agreement, §210.16(a)(2)**—ensure that the food service operation is in conformance with the SFA's agreement under the program.
- \_\_\_\_\_ 2. **Signature Authority, §210.16(a)(5)**—retain signature authority on the SA-SFA agreement, free and reduced price policy statement and Claims for Reimbursement.
- \_\_\_\_\_ 3. **Control of the School Food Service Account and Overall Financial Responsibility**
  - \_\_\_\_\_ a. **§210.16(a)(4)**—retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation; and
  - \_\_\_\_\_ b. retain control for the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals.
  - \_\_\_\_\_ c. USDA, FNS Guidance for School Food Authorities Contracting with FSMC – If FSMC promises a guarantee to meet fiscal goals specified by the SFA, the SFA must ensure that any guaranteed return promised by the FSMC is defined (using actual numbers) and remains in the non-profit food service account. If the contract contains such guarantees, the contract should also contain language that ensures that the FSMC bears responsibility for failure to meet those goals. “Returns” cannot be contingent upon multi-year contract duration.
- \_\_\_\_\_ 4. **USDA Donated Foods**
  - \_\_\_\_\_ a. **§210.16(a)(6)**—retain title to USDA donated foods; and
  - \_\_\_\_\_ b. ensure that all USDA donated foods made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein. All refunds received from processors must be retained by the SFA.

\_\_\_\_\_ 5. **Quality, Extent and General Nature of Food Service**

- \_\_\_\_\_ a. **§210.16(c)(3)**—provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210, and include these specifications in the IFBs or RFPs. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.
- \_\_\_\_\_ b. **§210.16(a)(4)**—retain control of the quality, extent, and general nature of its food service.
- \_\_\_\_\_ c. **§210.16(c)(3)**—make no payment for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications or do not otherwise meet the requirements of the contract.

\_\_\_\_\_ 6. **Health Regulations, §210.16(a)(7)**—maintain all applicable health certifications and assure that all State and local regulations are being met by a FSMC preparing or serving meals at a SFA facility.

\_\_\_\_\_ 7. **Monitoring Responsibilities, §210.16(a)(3)**—monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations.

\_\_\_\_\_ 8. **Use of Advisory Board, §210.16(a)(8)**—establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning.

\_\_\_\_\_ 9. **21-Day Cycle Menu, §210.16(b)(1)**—include a 21-day cycle menu developed in accordance with the meal pattern requirements specified in 7 CFR Part 210.

## Section C - FSMC Responsibilities

Indicate page number(s) in the contract where the provisions listed below are located:

**Page No.**

- \_\_\_\_\_ 1. **Health Certification, §210.16(c)(2)**—maintain all applicable State and/or local health certification(s) for the duration of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the SFA facility.
- \_\_\_\_\_ 2. **21-Day Cycle Menu, §210.16(b)(1)**—adhere to the 21-day cycle menu which was included in the IFB or RFP for the first 21 days of meal service. Changes thereafter may only be made with the approval of the SFA.
- \_\_\_\_\_ 3. **Provision of Free and Reduced Price Meals, §210.16(a)**—in order to offer a la carte food service, the FSMC must also offer free, reduced price and full price reimbursable meals to all eligible children.
- \_\_\_\_\_ 4. **USDA Donated Foods, §210.16(a)(6) (per OIG, 7/03)**—to the maximum extent possible, utilize USDA donated foods made available by the SFA. This means the FSMC does not purchase foods that are available as commodities. FSMC will use USDA donated foods solely for the purpose of providing benefits for the SFA's food service operation.
- \_\_\_\_\_ 5. **Recordkeeping, OMB Circular No. A-102, Attachment O, paragraph 14.h and §210.16(c)(1)**—maintain records to support the SFA's Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, SA, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit.
- \_\_\_\_\_ 6. **Reporting, §210.16(c)(1)**—report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA.
- \_\_\_\_\_ 7. **Purchasing, per OIG 7/03** – All payment discounts, rebates and allowances obtained from vendors must go to the SFA's food services account.
- \_\_\_\_\_ 8. **Purchasing, per OIG 7/03** – Charges to the SFA for goods and services should be reasonable and necessary for the operation of the non-profit school foodservice.

## Section D - General Terms - All SFA-FSMC Contracts

Indicate page number(s) in the contract where the provisions listed below are located:

**Page No.**

\_\_\_\_\_ 1. **Contract Duration**

\_\_\_\_\_ a. **§210.16(d)**—contracts must be of a duration no longer than one (1) year.

\_\_\_\_\_ b. **§210.16(d)**—options for the yearly renewal of a contract may not exceed four (4) additional one-year extensions.

\_\_\_\_\_ 2. **Energy Policy and Conservation Act, OMB Circular No. A-102, Attachment O, paragraph 14.**

\_\_\_\_\_ 3. **Termination Clause, §210.16(d)**—either party may cancel for cause with 60-day notification.

\_\_\_\_\_ 4. **Nonperformance Sanctions - OMB Circular No. A-102, Attachment O, paragraph 14.a**—provisions allowing for administrative, contractual, or legal remedies in instances where the FSMC violates or breaches contract terms, and providing for such sanctions and penalties as may be appropriate.

### **Section E - SFA-FSMC Contracts in Excess of \$2,500 Involving Food Service Workers Whose Duties are Manual or Physical in Nature**

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

**Page No.**

\_\_\_\_\_ **Contract Work Hours and Safety Standards Act, OMB Circular No. A-102, Attachment O, paragraph 14.f**

### **Section F - SFA-FSMC Contracts in Excess of \$10,000**

☐ Indicate with a check mark (✓) in the block if the following provisions are not applicable.

**Page No.**

- \_\_\_\_\_ 1. **Termination Clause - OMB Circular No. A-102, Attachment O, paragraph 14.b**
- \_\_\_\_\_ 2. **Equal Employment Opportunity - OMB Circular No. A-102, Attachment O, paragraph 14.c**

### **Section G - SFA-FSMC Contracts - \$25,000 or More**

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

**Page No.**

\_\_\_\_\_ **Debarment, Suspension, Ineligibility and Voluntary Exclusion, 7 CFR 3017.510**—certification regarding debarment/suspension from participating in Federal contracts/grants/awards. A new certification is also required for each renewal period.



## Section H - SFA-FSMC Contracts in Excess of \$100,000

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Page No.

\_\_\_\_\_ **Certification Regarding Lobbying, 7 CFR Part 3018**—a new certification is also required for each renewal period.

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Page No.

\_\_\_\_\_ **Disclosure of Lobbying Activities, 7 CFR Part 3018**—lobbying activities in connection with school nutrition programs must be disclosed. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis.

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Page No.

\_\_\_\_\_ **Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulations, OMB Circular No. A-102, Attachment O, paragraph 14.i**

## Section I - SFA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work

☐ Indicate with a check mark (✓) in the block if the following provision is not applicable.

Page No.

\_\_\_\_\_ **USDA Rights to Copyrights, Patent Rights and Rights in Data and Reporting of Discoveries and Inventions, OMB Circular No. A-102, Attachment O, paragraph 14.g**

## Section J - Unallowable SFA-FSMC Contract Document Provisions

The following indicate problem areas that have been identified in SFA-FSMC contract documents. The contract documents **must** be thoroughly checked, regardless of the procurement method used, to ensure that these areas **have not** been included, in any form. Indicate with a check mark (✓) in each block that the review of the document(s) indicates that there are no such provisions in the reviewed document(s), unless specified below.

Check (✓) as described above.

- ☐ 1. **Cost Plus a Percentage of Cost/Income**—cost plus a percentage of cost/income to the FSMC, however represented.
- ☐ 2. **Duplicate Fees**—fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.
- ☐ 3. **Purchasing**—if the SFA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.
- ☐ 4. **Acceleration Clause**—provisions (multi-year) that require full payment (e.g., program equipment purchases) if the contract is not renegotiated.
- ☐ 5. **Interest Payments**—interest payments to the contractor, however represented, including interest payments for equipment purchases.
- ☐ 6. **Guaranteed Return**—any "guaranteed return" must remain in the nonprofit food service account. "Returns" cannot be contingent upon multi-year contract duration. "Returns" must be defined using actual numbers.
- ☐ 7. **Delegation of SFA Responsibilities**—FSMC responsibility for any of the functions that must be retained by the SFA.
- ☐ 8. **Automatic Renewal**—provisions which automatically renew the contract.
- ☐ 9. **Processing Contracts**—contract document language that permits the FSMC to subcontract USDA donated foods for further processing.

For the item(s) above not checked (✓), indicate item number(s) with corresponding page number(s) of document(s) where provision(s) appears.

Item Number(s)

Page Number(s)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## Section K - Advisable Inclusions

Though the items below are not regulatory in nature, they have been included to offer technical assistance to the SFA in developing contractual language that will ensure that the best interest of the SFA is served by the contract.

### Page No.

- \_\_\_\_\_ 1. **Compliance with Program Regulations**—requirement that the FSMC conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 245 and 250, and FCS instructions and policy.
- \_\_\_\_\_ 2. **USDA Donated Foods**
  - \_\_\_\_\_ a. Method which delineates how the FSMC will pass the value of USDA donated foods used to the SFA.
  - \_\_\_\_\_ b. Specific statement that USDA donated foods are not to be used for special functions conducted outside the nonprofit school food service (e.g., catered meals).
- \_\_\_\_\_ 3. **Special Functions**—method which delineates the cost allocation for special functions conducted outside the nonprofit school food service. The method should demonstrate that labor costs are not being double billed for program meals and special function meals.
- \_\_\_\_\_ 4. **Fee Structure**
  - \_\_\_\_\_ a. In a cost-reimbursable contract, requirement for breakdown of administrative and management fees in order to prevent double billing.
  - \_\_\_\_\_ b. Basis for fee adjustments.
- \_\_\_\_\_ 5. **Purchasing**
  - \_\_\_\_\_ a. In a cost-reimbursable contract, if the FSMC makes purchases, the prices charged the SFA must be reasonable and necessary.
  - \_\_\_\_\_ b. A provision stating that any silence, absence or omission from the contract document specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

## Section K - Advisable Inclusions (continued)

### Page No.

- \_\_\_\_\_ 6. **Certification of Independent Price Determination**—certification regarding non-collusion. This certification may be met through the use of the Certification of Independent Price Determination form (Appendix D).
- \_\_\_\_\_ 7. **Civil Rights Compliance**—assurance that the FSMC will conform with all civil rights requirements applicable to the SFA.
- \_\_\_\_\_ 8. **Buy American Provision**—compliance with the Buy American provision under 7 CFR Part 250.
- \_\_\_\_\_ 9. **Claim Liability**
  - \_\_\_\_\_ a. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal/State reviews/audits, corresponding with the SFA's period of liability.
  - \_\_\_\_\_ b. The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.
- \_\_\_\_\_ 10. **Location of Records**—all FSMC records pertaining to the SFA should be maintained at the SFA while the contract is in effect, and preferably for the required retention period.
- \_\_\_\_\_ 11. **Nutrition Education**—FSMC responsibility for nutrition education activities, as applicable.